

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 892 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

POPATJI VAJAJI

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

MR MUKESH A PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/11/1999

ORAL JUDGEMENT

1. The petitioner - a convict of the offence punishable under section 302 of the Indian Penal Code, at present undergoing sentence at Central Prison, Sabarmati, Ahmedabad, applied for grant of furlough leave which was came to be rejected by the Inspector General of Prisons', Government of Gujarat, Ahmedabad under the order dated 20.8.1999. Hence, this Special Criminal Application

before this court.

2. Perused the Special Criminal Application and reply filed by the respondents. Under the order dated 20.8.1999 the prayer of the prisoner - petitioner to release him on furlough leave was declined on the two grounds. Firstly, adverse opinion of the District Superintendent of Police / Police Commissioner, Sabarkantha, as what it is stated that release of the petitioner on furlough leave may result in breach of public peace. Secondly, convict - petitioner earlier surrendered late by 300 days when he was on temporary bail and that too he has been arrested by the police.

3. In reply to the Special Criminal Application, it is stated that "The application rejected by the office of the I.G.Prisons', Ahmedabad by his order dated 20.8.1999 on the ground of adverse opinion by the District Superintendent of Police, Sabarkantha and also on the ground that the petitioner late surrendered by 300 days when he was on temporary bail". Merely, by stating that police adversely reported against the petitioner cannot be taken to be a ground to deny furlough leave to him. There must be some material on the record on the basis of which the officer may satisfied himself that release of the petitioner will result in breach of public peace. Even, on the record of this Special Criminal Application, report of the District Superintendent of Police has not been produced nor any material is produced in support of the said order. So only on the such opinion of the District Superintendent of Police, Sabarkantha without there being any material in support thereof it cannot be taken to be a ground for rejection of furlough leave of the prisoner. It is not in dispute that, furlough leave became due from 12.4.1999. For late surrender, convict is sufficiently penalised. Forfeiture of furlough leave was not one of the penalty. For that late surrender, he has been penalised and same without there being any other material to justify the action could not have been taken to be a sufficient ground to deny the right of the prisoner to go on furlough leave.

4. Reference in this respect may have to the decisions of the Full Bench of this court in the case of Bhikha Bhai Vs State, 1987 (2) GLR 1178 and that of the Division Bench in the case of Bhipat Bira Vs. State, 1987(1) GLR 596.

5. Last ground i.e. the opinion of the Jail Superintendent, Central Jail, Ahmedabad is concerned, it is suffice to say, in support thereof also, no material

has been produced on the record of this Special Criminal Application. In these facts and circumstances, it cannot be taken to be a sufficient ground for rejection of the application of the petitioner for grant of furlough leave.

6. As a result of the aforesaid discussions, this Special Criminal Application succeeds and the same is allowed. The application of the petitioner for furlough leave is granted on usual terms and conditions. Rule is made absolute. No order as costs.

(S.K.Keshote,J.)

(pathan)